

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MARVIN MORAN,

Case No.: 3:18-cv-00381-MMD -WGC

Plaintiff,

## **REPORT & RECOMMENDATION OF U.S. MAGISTRATE JUDGE**

V.

CHRISTY L. CRAIG, *et al.*,

## Defendants.

This Report and Recommendation is made to the Honorable Miranda M. Du, United States  
District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C.  
(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Plaintiff has filed an application to proceed in forma pauperis (IFP) (ECF No. 12) and *pro se* amended complaint (ECF No. 4). It is recommended that the IFP application be denied, and that the action be dismissed because while Plaintiff brings this as a civil rights action under 42 U.S.C. § 1983, his claims sound in habeas.

All the claims asserted relate to Plaintiff's underlying criminal case. First, he alleges that the court failed to administer the voir dire oath prior to voir dire in violation of his Fifth Amendment right to due process. Second, he contends that his right to equal protection was violated because he claims that the State lied to the jury by stating he did not have the owner's permission to use the car driven the day the victim died, and in stating that Plaintiff's rope was used to bind the victim's hands. Third, he asserts that his right to effective assistance of counsel was violated when his attorney failed to object to the State's rebuttal argument that Plaintiff did not present evidence to corroborate his testimony. Fourth, he alleges that his Eighth Amendment

1 right to be free from cruel and unusual punishment was violated insofar as he was given a life  
 2 sentence.

3 The effect of Plaintiff's arguments would be reversal of his conviction. Therefore, the  
 4 action should be dismissed. *Heck v. Humphrey*, 512 U.S. 477, 480-82 (1994); *Wilkerson v.*  
 5 *Wheeler*, 772 F.3d 834, 840 (9th Cir. 2014). Plaintiff should be advised that he may file a habeas  
 6 petition asserting these arguments after exhausting his State remedies.

7 **RECOMMENDATION**

8 **IT IS HEREBY RECOMMENDED** that the District Judge enter an order: **DENYING**  
 9 Plaintiff's IFP application (ECF No. 12); **DISMISSING** this action without prejudice; and,  
 10 advising Plaintiff that he may file a habeas petition after exhausting his State remedies. Plaintiff  
 11 also filed a motion for summary judgment (ECF No. 11) which should be **DENIED AS MOOT**.

12 The Plaintiff should be aware of the following:

13 1. That he may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to  
 14 this Report and Recommendation within fourteen days of being served with a copy of the Report  
 15 and Recommendation. These objections should be titled "Objections to Magistrate Judge's Report  
 16 and Recommendation" and should be accompanied by points and authorities for consideration by  
 17 the district judge.

18 2. That this Report and Recommendation is not an appealable order and that any notice of  
 19 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed  
 20 until entry of judgment by the district court.

21 DATED: November 6, 2018.

22   
 23 WILLIAM G. COBB  
 UNITED STATES MAGISTRATE JUDGE